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U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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June 7, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I write today continuing the Science, Space, and Technology Committee's oversight of the U.S. Environmental Protection Agency's (EPA) activities with respect to hydraulic fracturing.

First, I must express continued frustration with EPA's lack of transparency and responsiveness related to its hydraulic fracturing activities. Responses to prior written correspondence from Committee Members sent on June 7, 2011[1] and October 26, 2011[2] took months, and the Committee is still awaiting EPA's response to correspondence sent on February 21, 2012.[3] I hope and expect that you will endeavor to provide a timely and thorough response to the questions and information included in this letter.

The extensive correspondence described above illustrates the Committee's continued concern with EPA's confusing and questionable approach to hydraulic fracturing. Of particular note, three highly publicized instances exist in which EPA leapt to scientific conclusions before having all the facts, only to have to later retract or revise its claims:

- In Parker County, Texas, despite an exhaustive State review finding no scientific justification, claims of contaminated drinking water led EPA to issue an emergency order against industry and assert, for over a year, contamination from hydraulic fracturing. On March 30, 2012, EPA quietly withdrew its unsubstantiated claims.

- In Dimock, Pennsylvania, in December of 2011, after two years of industry cooperation with the State Department of Environmental Protection (DEP), a determination found the drinking water was safe. EPA reviewed the data provided by the DEP and agreed with the assessment. The following month, EPA in an about-face declared a concern, "that

[1] Questions for the record from May 11, 2011 hearing; EPA responses delivered September 23, 2011.
[2] Letter from Chairmen Hall, Harris, and Broun; EPA responses delivered January 5, 2012.
[3] Questions for the record from February 1, 2012 hearing.

residents' well water contains levels of contaminants that pose a health concern."[4] However, five months later, after releasing additional test results from water samples taken from 61 homes, EPA admitted that the tests showed drinking water wells in Dimock were and are safe, reiterating what industry and DEP already determined.

- In Pavillion, Wyoming, EPA issued a Draft Report charging likely contamination of groundwater by compounds associated with hydraulic fracturing. EPA highly publicized the conclusions, despite concerns raised by both Wyoming State agencies and industry regarding the report's scientific justifications. The Agency ignored repeated requests for the release of the technical data resulting from testing. EPA did not release the technical documentation associated with its findings until nearly two months later—coincidentally the evening prior to a Subcommittee on Energy and Environment hearing on the matter. A month later, EPA announced that the report would be placed on hold and agreed that further sampling was necessary to clarify questions raised about the initial testing.

These examples, while individually very troubling, collectively suggest EPA is not objectively pursuing an improved understanding of the relationship between hydraulic fracturing and drinking water, but rather is determined to find fault with the technology in order to justify sweeping new regulations.

EPA's Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources

Peer Review

In response to a question in the October 26, 2011 letter sent by Representatives Hall, Harris and Broun, EPA stated that the Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water (Study) would be designated a "highly influential scientific assessment" in accordance with guidance provided by the Office of Management and Budget's (OMB) January 2005 Final Information Quality Bulletin for Peer Review[5]. Furthermore, according to EPA's Scientific Integrity Policy[6], EPA compliance with the OMB bulletin is grounded in the Agency's Peer Review Handbook. To ensure the peer review record is complete and useful, EPA's Peer Review Handbook states that, "Ideally, the record begins when the decision to peer review a work product is made."[7] However, the Agency's Science Inventory,[8] which lists EPA's peer review agenda, does not include a record for the aforementioned Study on the website.

1. Given the guidance in the Peer Review Handbook that a peer review record should be developed as soon as the decision is made, how does the lack of inclusion of such a record in the Agency's Science Inventory for the Study comply with EPA's Peer Review Handbook, EPA's scientific integrity memo, and the OMB bulletin?

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[4] U.S. Environmental Protection Agency. "EPA to Begin Sampling Water at Some Residences in Dimock, Pa." January 19, 2012.
[5] Federal Register Vol. 70, No. 10. Friday, January 14, 2005.
[6] http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf
[7] U.S. Environmental Protection Agency. "Peer Review Handbook: 3rd Edition" EPA/100/B-06/002. Pg. 51.
[8] http://cfpub.epa.gov/si/si_public_pr_agenda.cfm

2. Other than EPA's written response to the October 26, 2011 letter, the Committee has been unable to identify any mention of EPA's designating the Study a highly influential scientific assessment (HISA) on the EPA website or in any materials distributed by the Agency.
    a. Why has there been no public acknowledgement of the HISA designation?
    b. What specific additional process requirements are HISA's subject to during the life of a study, and what specific steps has EPA taken to carry out these requirements and ensure the Study follows proper HISA protocols?
    c. Please provide documentation that outlines these additional processes and requirements.

Collaboration

In response to questions for the record from the May 11, 2011 hearing *Review of Hydraulic Fracturing Technology and Practices*, then-Assistant Administrator Paul Anastas stated that EPA had "undertaken a series of efforts to involve stakeholders in the development of the draft study plan."[9] However, there is little information on EPA's collaboration efforts with industry since the Study was finalized.

3. Please describe EPA's effort to comply with the direction in the Consolidated Appropriations Act of 2012 that requires interim study results be subjected to Interagency Review and public comment, specifically as described in Section 2.2 of the Draft Hydraulic Fracturing Study Plan released February 7, 2011.

4. Please describe EPA's efforts to collaborate with industry as the study work progresses.

    a. Does this include anything other than working with the five retrospective site operators and conducting a quarterly webinar with industry stakeholders?
    b. Please provide a list of all contacts and meetings held with stakeholders, as well as a description of the substance of the meeting relating to the finalized study plan.

5. How has EPA responded to the SAB recommendation that the Agency develop a balanced, collaborative advisory group of stakeholders that could be engaged throughout the research process?

6. What does EPA consider "collaboration" to mean?

    a. Does EPA's definition go beyond interaction with the operators at the seven total retrospective and prospective case study sites?
    b. Do you believe the Agency has undertaken sufficient collaboration to ensure a scientifically sound result?

[9] Dr. Paul Anastas. QFR responses dated September 23, 2011.

7. At a November 2011 Committee hearing, I asked Dr. Paul Anastas if industry representatives can accompany EPA during site sampling for the Study. He responded that "I think that the study is designed so that if the property owner allows for the presence of people beyond EPA on that site, then we have every desire to work collaboratively and as ultimately as possible." It is my understanding that industry stakeholders requested an opportunity to collaborate and collect split samples with EPA as early as December 2011, a request that EPA immediately rejected. Why would this request be rejected, in light of the agency's history of collaborating with industry, and what is the status of cooperation regarding split sampling?

Study Utility to Policy Makers

In testimony before the Committee prior to his retirement, Dr. Anastas stated that this study is "not a risk assessment" of hydraulic fracturing. Rather, as EPA stated repeatedly, this is merely a "risk identification" exercise. Unless EPA's study identifies the degree of any risk, the probability of any risk occurring, and whether or not existing state or federal rules or industry best practices eliminate or mitigate any risk, EPA's study will provide little meaningful guidance to policymakers.

8. Does EPA consider this outcome—after four years and millions of dollars—to be consistent with the letter and spirit of the request made by Congress for EPA to study this issue?

The technologies that enable hydraulic fracturing are undergoing continuous evolution, including increasing efficiency in the transportation and use of materials, improving the chemical profile of additives used, shortening the time it takes to complete fracturing operations, and increasing productivity from the reservoir. Under the study plan developed by EPA, the Agency will, in 2014, release a portrait of hydraulic fracturing the way it was conducted in years past.

9. Given this fact, how will EPA's final report realize even the limited use—mere risk identification—that the Agency intends it to serve?

10. How will EPA ensure that hydraulic fracturing as conducted in 2012 or 2014 (the period of the reports' release) shares any potential risks identified in EPA's final report for hydraulic fracturing as conducted in 2009 or earlier (the period studied)?

Implementation

Since releasing the draft study plan, EPA unilaterally expanded the scope of the study beyond Congress's original request to include items such as environmental justice and discharges to publicly owned water treatment works.

11. How are these related to the original Appropriations report language to EPA? Is this a good use of EPA's limited resources?

12. Will EPA continue to expand the scope between now and the final report in 2014?

13. To what extent has EPA worked with each of the states in which EPA is conducting retrospective sampling? How regularly is EPA communicating with state officials regarding the study?

14. Please provide a list of contacts and meetings held with state officials for each of the sites and background information provided to EPA by the states for each site.

15. How does EPA intend to improve coordination with the states for the prospective site studies?

16. There are concerns, particularly in light of Pavillion, that EPA is not adhering to best practices in the field. What steps is EPA taking to ensure that EPA's field sampling is being conducted properly and without contaminating groundwater samples?

17. Is an independent third party observing and recording EPA's field activity for future assessment by peer reviewers and other stakeholders?

18. EPA's pre-dissemination of the Pavillion, WY draft report via press release prior to it being formally noticed in the Federal Register was reckless and has predictably resulted in EPA's having to release additional data and conduct additional testing. Will EPA pre-disseminate the draft hydraulic fracturing study in accordance with OMB guidelines and at an appropriate time such that additional data and testing aren't required?

Regulatory Intentions

In March of this year, Fred Hauchman, the Director of EPA's Office of Science Policy within the Office of Research and Development, stated that the Agency is "doing a pretty comprehensive look at all the statutes" to determine "where there are some holes" to allow further regulation.[10]

19. Please describe what Dr. Hauchman meant by "comprehensive look".

20. Why is the Office of Research and Development (ORD) conducting this "comprehensive look" of statutes for expanded EPA regulations on hydraulic fracturing?

21. Under what authority is ORD conducting this "comprehensive look".

22. What expertise does ORD have to conduct such a "comprehensive look"?

23. Who is involved in this "comprehensive look" of all these statues? Please provide the name, title, and qualifications of staff involved in this process.

[10] Bridget DiCosmo, "EPA Examining Existing Authorities To Step Up Regulation of Fracking," Inside EPA, March 14, 2012.

24. Please provide all records from the staff identified in question 21 associated with the "comprehensive look" sited by Dr. Hauchman.

25. Please provide a list of all contacts and meeting held with stakeholders, as well as a description of the substance of those meetings, relating to the "comprehensive look at all the statutes" to determine "where there are some holes" to allow further regulation.

Dr. Hauchman has played a substantial role in overseeing and serving as the public face of the ongoing retrospective and prospective hydraulic fracturing study, including presenting to EPA's Children's Health Protection Advisory Committee on the scope of the study in November of last year,[11] conducting interviews on the study,[12] and presenting at public meetings about the study.[13]

26. What is Dr. Hauchman's formal role in overseeing the hydraulic fracturing study?

27. What is his formal role in conducting a statutory review to find "where there are some holes" for EPA regulation?

28. Is the practice of the same EPA employee overseeing both the risk assessment of hydraulic fracturing as well as the pursuit of expanded regulatory authority consistent with the Agency's Scientific Integrity Policy, which "[r]ecognizes that while Agency risk assessments are intended to address the needs of risk management, quantitative conclusions should not be influenced by possible risk management implications of the results," or National Academy of Sciences' recommendations dating back to the 1983 Red Book about the need to separate risk assessment and risk management?

Given the history of EPA missing deadlines responding to previous letters, I am providing additional time for this letter. Please provide written response by no later than three weeks from the date of this letter. If you have any questions regarding this request please contact Ms. Tara Rothschild with the Subcommittee on Energy and Environment Majority staff at (202) 225-8844.

Sincerely,

Rep. Andy Harris
Chairman
Subcommittee on Energy
and Environment

[11] http://insideepa.com/Inside-EPA/Inside-EPA-11/25/2011/gop-seeks-to-end-fracking-study-but-advisers-push-to-weigh-kids-risks/menu-id-153.html
[12] http://money.cnn.com/2010/09/16/news/fracking_EPA.fortune/index.htm
[13] http://www.epa.gov/hfstudy/all-agendas-093010.pdf

Cc: Rep. Ralph Hall
Chairman
Committee on Science, Space,
and Technology

Rep. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space,
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Rep. Brad Miller
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